

September 2, 1943

Mr. Edwin C. Pendleton, Executive Secretary
Arizona Teachers' Retirement System,
507 Luhrs Tower
Phoenix, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Dear Mr. Pendleton:

Reference is made to your letter of the 25th inst. and to the request for opinion from Mr. J.E. Carlson, Superintendent of Schools, Douglas, Arizona.

"I have a librarian who has kept up her certificate for 10 years but has not taught classroom work. She wants to be on the pension. I told her I did not think she could be included. What is the regulation? She intends to keep her certificate in force. She seems to think that her ten years prior service should count, even though she has been a librarian.

"Here is another case. I am employing about 6 or 7 women on a one semester basis. They do not want to be included on the pension. I maintain that they need not be included although employed for 4½ mos. How about it?"

The librarian in question, of course, having an active teachers' Certificate, if teaching, qualifies for the benefits of the Retirement System to that extent, but as she is not actively engaged in teaching she would only be able to qualify for the benefits of the system if she is employed "indirectly as supervisory teacher, principal, superintendent, or administrative officer, in any school or educational institution or agency supported by the State or any political subdivision thereof, other than the University of Arizona," as provided for in Section 2, Chapter 61, Laws of 1943, (now Section 54-1702, Arizona Code 1939, as amended.)

We are of the opinion that a "librarian" does not come within the legislative intentment of "supervisory teacher, principal, superintendent or administrative officer."

With reference to Mr. Carlson's inquiry concerning employment of some teachers on "a one semester basis", we invite attention to Section 4-a of the Teachers' Retirement Act of 1943, (now Section 54-1704-a, Arizona Code 1939, as amended) which reads:

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"Any person who becomes an employee after July 1, 1943, shall become a member of the retirement system within one year after the date of his first employment, as a condition of further employment."

Section 2 of the Teachers' Retirement Act of 1943 (now Section 54-1702, Arizona Code 1939, as amended) reads: (in part)

"Earnable compensation means the amount of compensation which would be payable to an employee if he worked the full normal working time, etc."

In the same Section 2 of the Act of 1943, and "employee", within the meaning of the Act, and entitling one to its benefits is stated:

"employee means any teacher employed on an annual or monthly salary basis."

"We are of the opinion that the last quoted definition of "employee" has reference to regularly employed teachers, whether paid on an "annual" or "monthly" basis, and does not apply to teachers employed as temporary or emergency teachers, in an emergency, and whose terms of employment are purely of a temporary nature.

Your board of trustees would be justified in not requiring deductions from such temporary salaries, and in declining to accept such emergency teachers as members of the System.

However, no practice should be permitted which will permit employment, of temporary teachers, regularly under the guise of temporary employment, for the purpose of evading the mandate of the Retirement Act, and particularly Section 4-2 thereof, as above quoted.

We are of the further opinion that such temporary employment, under the circumstances stated, would not, at some time in the future, authorize an allowance of "creditable service" for such temporary employees.

Respectfully,

JOE CONWAY
Attorney General

THOMAS J. CROAFF
Assistant Attorney General

EARL ALDERSON
Chief Assistant
Attorney General